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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/098,758 06/17/98 DUVALL

T 2543-28-93

EXAMINER

IM52/1106

MORTON INTERNATIONAL, INC.
100 INDEPENDENCE MALL WEST
PHILADELPHIA PA 19106-2399

MULCAHY, P.
ART UNIT PAPER NUMBER

1713
DATE MAILED:

11/06/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/098,758

Applicant(s)

DUVALL, TOD C.

Examiner

Peter D. Mulcahy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 6-11 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 6-9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Snell taken alone or in view of Pollock.

The rejection as set forth under 35 U.S.C. § 103 in Paper No. 17 is deemed proper and is herein repeated.

Applicants' arguments filed August 20, 2001 have been fully considered but have been deemed to be not persuasive.

Applicants address this rejection by emphasizing that claim 1 of the instant application is directed to a composition "consisting essentially of" the claimed ingredients. Applicants argue that the Snell patent teaches additional stabilizers and additives and that the inclusion of these components fails to suggest the polymeric composition as instantly claimed. Specifically applicants conclude by stating that this "teaching would not suggest a polymer composition in which a free mercaptan and zinc chloride are the only stabilizers to one of ordinary skill in the art of PVC stabilization."

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The Examiner answers this argument by stating simply, the claims are not limited to a polymer composition in which a free mercaptan and a zinc chloride are the only stabilizers. The Courts have well established the legal definition of "consisting essentially of." This language is defined as excluding those ingredients which would materially affect the basic and novel characteristics of the instantly claimed invention. There appear to be no ingredients in Snell which would materially change the basic and novel characteristics of the instantly claimed invention. Applicants have failed to show or allege that any of the ingredients in the Snell disclosure when added to the instantly claimed invention would in fact materially change the basic and novel characteristics of the claimed invention. As such, these ingredients are not seen to be excluded as argued by applicants.

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE

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ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter D. Mulcahy, whose telephone number is (703) 308-2449. The examiner can normally be reached on Tuesday through Friday from 7:30 A.M. to 6:00 P.M.

The fax telephone number for this group is (703) 305-3599.

Any inquiry of general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2351.

P. Mulcahy:cdc
October 29, 2001


PETER D. MULCAHY
PRIMARY EXAMINER
GROUP 1500